

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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UNITED STATES OF AMERICA,

Plaintiff,

v.

MARIO DEMARLO ALSTON,

Defendant.

Case No. 2:20-cr-00113-CDS-EJY

ORDER

Before the Court is Defendant's Motion for Leave to File a Late Notice of Appeal. ECF No. 68. Following an initial review of Defendant's Motion, the Court ordered Defendant to provide additional justification in support of his request. ECF No. 71. Defendant filed a Supplement to his Motion on November 22, 2022. ECF No. 72.

In that Supplement, counsel for Defendant explains that through written correspondence with Defendant, Defendant indicates he was transferred from federal to state custody on October 4, 2022, and during the transfer and subsequent classification process he did not have access to his property or the mailing address for counsel's office so that he could send a letter regarding his wishes for appeal. *Id.* at 2. In addition, Defendant informed counsel that his first opportunity to reach counsel by telephone was on October 12, 2022, at which time Defendant left counsel a voicemail informing counsel of Defendant's desire to appeal. *Id.* at 2-3. Counsel is tentatively set to meet with Defendant on December 8 and hopes to obtain a Declaration in support of the instant Motion. *Id.* at 3. Counsel is also attempting to obtain Defendant's Offender Movement History Report and Offender Information Summary to verify Defendant's inability to communicate with counsel during the relevant period. *Id.*

Under Federal Rule of Appellate Procedure 4(b)(4), "[u]pon a finding of excusable neglect or good cause, the district court may—before or after the time has expired, with or without motion and notice—extend the time to file a notice of appeal for a period not to exceed 30 days from the expiration of the time otherwise prescribed by this Rule 4(b)." Having reviewed the Motion in

1 conjunction with the Supplement, the Court exercises its discretion and finds good cause exists for
2 Defendant to file a Late Notice of Appeal. Defendant presents sufficient information to demonstrate
3 that he was unable to communicate with his counsel preventing him from timely discussing his desire
4 to file an appeal.

5 Accordingly, IT IS HEREBY ORDERED that Defendant's Motion for Leave to File a Late
6 Notice of Appeal (ECF No. 68) is GRANTED.

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8 Dated this 29th day of November, 2022.

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11 ELAYNA J. YOUCHAK
12 UNITED STATES MAGISTRATE JUDGE
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